IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Brijlal.
vs.
Kamlesh Kumar.

S.B.CIVIL SECOND APPEAL NO.396/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 23.8.2007 PASSED BY SHRI RAMESH CHANDRA PAREEK, ADDITIONAL DISTRICT JUDGE, BHADRA IN CIVIL REGULAR APPEAL NO.10/2002 (20/1998).

DATE OF JUDGMENT ::: 6.11.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.GR Goyal, for the appellant.
Mr.RK Thanvi a/w Mr.K Bansal, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

Two Courts below recorded finding of fact against the appellant/tenant in a suit filed for eviction of

the appellant/tenant by the respondent/landlord.

Learned counsel for the appellant submitted that the plaintiff/respondent purchased the suit property and within one year of the purchase, he filed the suit for eviction of the appellant/tenant. In view of the above reason only, the plaintiff's suit was not bonafide. It is also submitted that the plaintiff stated that he is unemployed and have no income and he wants to start business in the property in dispute which is in occupation of the appellant as tenant. Whereas it has come on record from the evidence of the plaintiff and his witnesses that the plaintiff is possessing several properties including the shops which are lying vacant. It is submitted that the Hon'ble Supreme Court in identical facts and circumstances of purchase of property by a person and then filing suit for eviction of the tenant, denied the relief of eviction. For this, learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court delivered in the case of Indrasen Jain vs. Rameshwardas reported in AIR 2005 SC 578.

I considered the submissions of learned counsel for the parties and perused the two judgments passed by the courts below.

It appears that the plaintiff purchased the suit property by registered sale deed on 26.9.1991 and filed the suit for eviction of tenant in 1992 and in that suit, the plaintiff stated that he is having no business with him but he has experience of business and, therefore, he wants to start the business in the shop in question. The defendant in written statement contested the plea of personal bonafide necessity of the landlord. In the evidence of one of the witnesses of the plaintiff, PW2 Laxmi Narayan stated that the plaintiff had one shop near Sawa Bus Stand. The appellant's contention is based on this evidence of witness PW2. The trial court considered this aspect of the matter and clearly observed that after this statement of plaintiff's witness that the plaintiff has one shop at Sawa Bus Stand, there is no further fact whether the said shop is vacant and is available to the plaintiff or not. The trial court also considered the appellant/defendant's own evidence where the defendant clearly stated that the defendant had no knowledge that the plaintiff had any vacant shop at Bhadra or not. It appears that the courts below considered the evidence of the parties in detail and thereafter, came to the conclusion that the need of the plaintiff is bonafide.

The facts of the case of Indrasen Jain (supra) have no application to the present case in view of the fact that in that case, a government employee retired

and after 5 years, he purchased the rented property and thereafter filed the suit for possession after one year on account of his personal bonafide necessity. The Hon'ble Supreme Court on the facts of that case observed that it is not clear that how all of sudden the need has arisen in the case of the plaintiff when he retired 5 years ago.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellants submitted that the appellant may be given some time so that he may make arrangements of shifting his business particularly in view of the fact that he is an old person, therefore, he prayed that some reasonable time may be given to the appellant to vacate the suit premises.

Learned counsel for the respondent has serious objection to the grant of time to the appellant in view of the fact that the plaintiff is unemployed and much time had elapsed.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case and

the age of the appellant, this Court is of the view that the appellant be granted time upto 30.11.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 30.11.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, and shall also pay the rent upto 30.11.2008 in advance within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.12.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya